

12 April 2004

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: RM-10865/DA No. 04-700 --
Comments on the CALEA Petition for Rulemaking

Dear Secretary Dortch:

The Tennessee Bureau of Investigation submits these comments on the U.S. Department of Justice's ("DOJ"), Federal Bureau of Investigation's ("FBI"), and U.S. Drug Enforcement Administration's ("DEA") Joint Petition ("Petition") filed on March 10, 2004, before the Federal Communications Commission ("FCC") requesting that the FCC resolve, on an expedited basis, various critically important issues arising from the implementation of the Communications Assistance for Law Enforcement Act ("CALEA").

The TBI is Tennessee's principal criminal investigative agency, granted original jurisdiction in areas ranging from domestic terrorism, fugitives, and public corruption to narcotics. In addition, the TBI is tasked by Tennessee law with assisting other state and local agencies with accomplishing communications intercepts in support of their own ongoing investigations, and joint investigations with TBI.

TBI has long recognized that the interception and analysis of telecommunications is a tremendously valuable tool to advance TBI's mission of protecting the people of Tennessee and dismantling criminal conspiracies. TBI alone does not have the resources to develop intercept technologies independently, or a national presence strong enough to influence the telecommunications industry. As a result, TBI has followed the passage and implementation of CALEA closely, and depends on the federal agencies responsible for its implementation and enforcement to ensure that TBI retains the ability to conduct lawfully authorized surveillance.

It is vitally important, and consistent with Congress's intent in enacting CALEA, that the FCC initiate a rulemaking proceeding and adopt the rules proposed by the DOJ, FBI, and DEA in the above Petition. Congress enacted CALEA in 1994 to insure that law enforcement has the ability to conduct authorized wiretaps in the future as technologies changed. Since 1994, many new communications technologies have arisen, including broadband Internet access, voice over IP telephony ("VoIP"), push-to-talk digital dispatch services, and other packet mode services. These services, currently used by millions of American citizens, pose a great challenge to state and local law enforcement in that many such providers of these communications services have failed to voluntarily adopt currently available CALEA intercept solutions. Thus, law enforcement has been thwarted in its attempts to implement lawfully authorized surveillance intercepts.

TBI has had numerous contacts with the telecommunications industry regarding compliance with lawfully ordered surveillance. It has been TBI's experience that the telecommunications providers will respond to market pressures and the need to keep costs down before they will respond to the needs of law enforcement. They will only provide those services that are absolutely required of them. As a result, TBI is satisfied that voluntary industry compliance with CALEA does not work.

Furthermore, state and local law enforcement do not have the financial or personnel resources to develop costly *ad hoc* surveillance solutions for each new communications service. Nor should they have to under the current law. For all equipment, services, and facilities deployed after January 1, 1995, Congress, through CALEA, expressly passed the burden of designing and paying for such surveillance solutions onto the telecommunications carriers themselves.

Given the importance of the issues discussed above, it is important that the FCC promptly act upon the Petition and commence a rulemaking proceeding adopting the DOJ's, DEA's and FBI's proposed rules. Thank you for your time and consideration of this submission.

Respectfully submitted,

David Griswold
Director
Tennessee Bureau of Investigation